

July 25, 2021

Via Electronic Delivery

Chief Copyright Royalty Judge Jesse M. Feder
Copyright Royalty Judge Steve Ruwe
Copyright Royalty Judge David R. Strickler
US Copyright Royalty Board
101 Independence Ave SE
Washington, DC 20024

To Your Honors:

In an open letter published on June 2, 2021, a statement by Nashville Songwriters Association International (NSAI) in support of continuing the Subpart B royalty freeze was based on an analysis that “physical mechanical royalties will amount to less than 1% of the total mechanical royalty revenue in the United States during 2023-2028, the rate period this CRB proceeding covers” [\[1\]](#)

In the Recording Industry Association of America’s (RIAA’s) *Year-End 2020 Revenue Report*, [\[2\]](#) physical vinyl and CDs and permanent downloads represent 17% of total revenues in 2019 (\$1.8 billion) and 14% of total revenues in 2020 (\$1.7 billion). The International Federation of the Phonographic Industry (IFPI) states physical recordings and permanent downloads as more than 25% of total worldwide revenues. [\[3\]](#) In fact, vinyl sales are exploding beyond manufacturing capacity [\[4\]](#), with a 30% increase in 2020 and rising a further 108% in Q1/Q2 2021.

Meanwhile, in August 2019, the RIAA accused Amazon of selling “millions of fake CDs” – “with sales of physical products of music accounting for over \$1.1 billion in revenue.”[\[5\]](#) [\[6\]](#) [\[7\]](#)

Obviously, physical mechanical royalties will continue to represent more than “1% of the total mechanical royalty revenue in the United States from 2023-2028.”

I wish to bring to your attention a related issue of fraudulent first sale, underreported and rarely discussed. In January 2021, the Office of the U.S. Trade Representative listed Amazon’s third-party marketplace on its “Notorious Sites” in Canada, Germany, France, India, and the UK. [\[8\]](#) [\[9\]](#)

The American Association of Independent Music notified their indie-label members that Chinese pirates are flooding Amazon with counterfeit CDs, selling the CDs “within about two weeks of an album’s release date.” Amazon even lists these products in their “buy box.” [\[10\]](#)

While Phonorecords III focused on mechanical royalty rates for streaming distribution of recorded music, Phonorecords IV concerns physical distribution of recorded music, often on sites such as Amazon, eBay, Discogs, etc, which continues to accrue market share through traffic in a stealthy program of selling “used like new” copies of what are essentially print-on-demand counterfeits. Third party marketplace sellers rely on music industry insiders dumping unsold, warehoused physical product, termed ‘cutouts’ or ‘returns.’ These products, written off or accounted in audits under ‘certificates of destruction’ are actually *not* destroyed but, instead, redistributed through third-party marketplaces, sold as “used like new.”

Amazon may pay a small fee for selling unsold, warehoused inventory as “overstock,” but fraudulent first sale is not a cottage industry. Most of this “used like new” stock was never purchased in the first place. Songwriters and performers aren’t remunerated for these sales. The greymarket and counterfeit physical product actually supports a false narrative about the real scale of the market for physical recorded music.

As an independent singer-songwriter, I am working in a failed market – my work devalued by frozen mechanical royalty rates for compulsory licenses *and* then stolen by fraudulent first sales of counterfeit traffic and bootlegs.

I support the statement by Abby North, of North Music Group, in a May 13, 2021 letter to Congress, “It literally takes hundreds of streams to equal the 9.1 cent mechanical publishers receive for a physical sale or download. That’s why the physical and download mechanical rate is so important to independent creators, and especially to those just starting out... Vinyl sales are still strong among many retailers, including Amazon and others. Major music publishers do not face the same struggles as independent publishers and songwriters. They are part of multi-national conglomerates that own both the major publishers and major record labels. Major publishers that agree to freeze the statutory rate are simply leaving more money in the pockets of the labels that are their sister companies. We, on the other hand, are trying to preserve the only sources of revenue that we have.” [11]

Respectfully,
Michelle Shocked
independent, self-administered singer-songwriter, Campfire Girl Publishing

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2. RIAA Year-End 2020 RIAA Revenue Statistics <https://www.riaa.com/wp-content/uploads/2021/02/2020-Year-End-Music-Industry-Revenue-Report.pdf>
3. IFPI Our Industry Data 2020 <https://www.ifpi.org/our-industry/industry-data/>
4. The Pandemic Caused An Explosion In Vinyl Demand – Here’s Why The Music Industry Can’t Meet It June 8, 2021 <https://static.billboard.com/files/2021/06/june-08-2021-billboard-bulletin-1623187818.pdf>
5. U.S. Music Industry Accuses Amazon Of Selling 'Millions Of Fake CDs' Aug 17, 2019 <https://www.forbes.com/sites/zakdoffman/2019/08/17/us-music-industry-accuses-amazon-of-selling-millions-of-fake-albums/?sh=4c58666b38ac>
- 6 . Pirated CDs on Web Deal Another Blow to Music Industry Oct 30, 2016 <https://www.wsj.com/articles/boost-in-online-pirated-cd-sales-deal-another-blow-to-music-industry-1477867243>
7. Out of Every 4 CDs Sold on Amazon Is Counterfeit: An RIAA Study Shows That Amazon is Guilty of Selling Counterfeit CDs Oct 31, 2016 <https://www.digitalmusicnews.com/2016/10/31/amazon-counterfeit-cds/>
8. U.S. counterfeiting report includes Amazon foreign sites Apr 29, 2020 <https://seekingalpha.com/news/3566157-u-s-counterfeiting-report-includes-amazon-foreign-sites>
9. Amazon Notorious Markets <http://www.notoriousmarkets.com/>
10. Recording Industry Association of America Response to Comment Request; Report on the State of Counterfeit and Pirated Goods Trafficking and Recommendations Docket No. DOC-2019-0003 [190703544-9544-01] Submitted via regulations.gov https://torrentfreak.com/images/RIAA_Comments_to_DOC_Combatting_Trafficking_in_Counterfeit_and_Pirated_Goods_7-29-19.pdf
11. North Music Group Letter to Congress on Frozen Mechanicals and the Copyright Royalty Board <https://thetrichordist.com/2021/05/24/northmusicgroup-letter-to-congress-on-frozen-mechanicals-and-the-copyright-royalty-board/>